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BULLETIN **2026-07**

The following Bulletin is to advise the reader of the current position of the Kentucky Department of Insurance on the specified issue.

THIS BULLETIN IS FOR INFORMATIONAL PURPOSES ONLY. IT DOES NOT AMEND OR INTERPRET PROVISIONS OF THE KENTUCKY REVISED STATUTES OR THE KENTUCKY ADMINISTRATIVE REGULATIONS.

TO: All ENTITIES offering pharmacy benefits within the Commonwealth of Kentucky

**FROM: Sharon P. Clark, Commissioner
Kentucky Department of Insurance**

DATE: September 30, 2026

RE: 2027 PRESCRIPTION DRUG DISPENSING FEE

Purpose

The Kentucky Department of Insurance ("Department") is issuing this Bulletin to provide supplemental information regarding the regulation and enforcement of Senate Bill 188, which the Kentucky General Assembly passed during the 2024 Regular Legislative Session ("2024 SB188").

Background

2024 SB188 became effective January 1, 2025, and has been codified as KRS 304.17A-591 *et seq.* Therefore, any health benefit plan issued, delivered, amended, or renewed on or after

January 1, 2025, must satisfy the pharmacy benefit management (“PBM”) requirements mandated by KRS 304.17A-591 *et seq.* The Department issued Bulletin 2025-03 on June 03, 2025, to provide guidance on its enforcement of 2024 SB188.

For prescriptions filled at independent retail pharmacy locations, 2024 SB188 established a minimum dispensing fee of ten dollars and sixty-four cents (\$10.64), for any health benefit plan issued, delivered, amended, or renewed on or after January 1, 2025. See KRS 304.17A-595(2)(c).2.b.ii. Per KRS 304.17A-595(2)(c).2.c.ii., the Department was thereafter charged with analyzing data collected by the Kentucky Board of Pharmacy (“KBP”) to calculate an updated dispensing fee for health plan years beginning on or after January 1, 2027.

New Dispensing Fee Beginning January 1, 2027

As a result of the Department’s actuarial analysis of the data provided by pharmacies through the KBP, the new dispensing fee that will apply for health plan years beginning on or after January 1, 2027 will be sixteen dollars and thirty-one cents (\$16.31). This fee will apply until January 1, 2029, per KRS 304.17A-595(2)(c).2.c., when the fee will be adjusted, if appropriate, according to the results of the study required to be performed every two (2) years.

The sixteen dollars and thirty-one cent (\$16.31) dispensing fee will apply to all prescriptions filled at Kentucky pharmacy locations, excluding mail-order only pharmacies and distributors, for health plan years beginning on or after January 1, 2027.

Regulation and Enforcement

The Department is also providing the guidance below to clarify and explain its enforcement of the provisions of 2024 SB188.

A. Complaints

The language of KRS 304.2-165 is unambiguous: authorized and licensed persons shall respond to Department complaint investigations within fifteen (15) days. The response should be detailed, complete, and clear. Although the Department may allow for reasonable extension requests, the Department expects routine responses to resolve complaints fully within that time.

The Department will accept valid and complete complaints against PBMs, after an erroneous payment has been completed and the provider of the pharmacy benefit has made an attempt to correct the claim payment directly with the PBM according to all contractual rights and remedies available.

All PBM agreements must conform to the requirements of Kentucky law, including 2024 SB188, when issued, delivered, entered, renewed, extended, or amended with Kentucky pharmacies on or after January 1, 2025. Any person claiming a contract has not been renewed on or after January 1, 2026, will be required to provide documentary evidence to support the claim of an unexpired or unexpired contract.

The dispensing fee and national average drug acquisition cost (“NADAC”) pricing should be reported separately in response to all complaints to demonstrate compliance with KRS 304.17A-595. Furthermore, all complaint responses should include clear and detailed explanations of any cost-share applied, and how and when all payments were made for each pharmacy claim identified.

B. ERISA Plan Design Preemption

The Department does not have jurisdiction over the “plan design” of plans governed by the Employee Retirement Income Security Act of 1974 (“ERISA”). See 29 U.S.C. §1144(a) (2018). In general, federal courts have held that any state law that attempts to regulate employee benefit plans subject to ERISA in contravention to the provisions of ERISA is preempted. Employee benefit plans that fall under the jurisdiction of ERISA cannot be made to comply with the state law if the state law would affect the “plan design” of the employee benefit plan. State laws that affect plan design have been described as those governing a central matter of plan administration or those interfering with nationally uniform plan administration. See *Gobeille v. Liberty Mut. Ins. Co.*, 577 U.S. 312, 320 (2016). Examples of state PBM laws found to be preempted by ERISA as affecting plan design include any willing provider laws, network adequacy standards, laws barring PBMs from interfering with a patient’s choice of pharmacy, and anti-steering laws that prohibit a plan from using mail order pharmacies. See *PCMA v. Mulready*, 78 F.4th 1183 (10th Cir. 2023); *McKee Foods Corp. v. BFP, Inc., et al.*, 173 F.4th 242 (6th Cir. 2026).

Based on the above-cited federal law, the Department does not have jurisdiction to enforce any provisions of 2024 SB 188 that affect the plan design of ERISA plans.

For any questions regarding the contents of this bulletin, please contact DOI.ConsumerComplaints@ky.gov.



Sharon P. Clark, *Commissioner*

Kentucky Department of Insurance

On this 30th day of September 2026